



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/533,770

05/04/2005

Johann Wiesmuller

HUBR-1281

4179

24972 7590 12/09/2009  
FULBRIGHT & JAWORSKI, LLP  
666 FIFTH AVE  
NEW YORK, NY 10103-3198

EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/533,770	<b>Applicant(s)</b> WIESMULLER ET AL.	
	<b>Examiner</b> Anthony Weier	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 21-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 21 and 35, it is not clear if the “waters produced in fruit and vegetable processing” refers to the option of treating waters produced by fruit or vegetable processing or whether same actually means waters produced from processing fruits and vegetables together. The original specification appears to support the former as examples show treatment of luster water from fruit processing alone (Example 1).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21, 24, 28-30, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Dimick et al.

Dimick et al discloses a process wherein volatile flavorings are separated from a monophasic starting material (e.g. citrus juice) wherein same is extracted with a compressed hydrocarbon using a column with countercurrent processing and wherein

Art Unit: 1794

the flavoring is separated from the solvent using, for example, vaporizing induced by heat (e.g. liquid butane; col. 2, lines 40-55; col. 4, lines 7-28; Example 1). Dimick et al further discloses mixing the separated flavoring into an alcohol (i.e. sorbitol; col. 2, lines 15-20).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 21-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidlas et al taken together with Olives article.

Heidlas et al discloses a process wherein volatile flavors are removed from a monophasic material wherein the starting material has a fat content of, for example, 10% fat, said process also including extraction treatment using hydrocarbons (e.g. propane) at a temperature and pressure within the ranges called for in the instant claims (e.g. 20 C and 20 bar or 2 MPa). It should be noted that natural flavoring is removed primarily through the second extraction but also during the first extraction (col. 4, lines 8-12). The final extracted material is separated from the compressed gas to provide a liquid extract or concentrate (see Examples 1 and 2). Heidlas et al also discloses said gases used to be recycled for economic reasons (see col. 3, lines 10-15).

The claims further call for the starting material to be a fruit juice, vegetable juice, or luster water produced from vegetable or fruit processing. It should be noted

Art Unit: 1794

that olives are a type of fruit and are known as a source of flavoring as taught, for example, by the Olives article. Heidlas et al extends the treatment therein to “all other natural substances containing fat and oil as well as aroma substances are...also suitable” (col. 2, lines 39-41). Olives are also a source of fat and oil. It would have been obvious to one having ordinary skill in the art at the time of the invention to have treated olives by the process of Heidlas et al wherein the juice of or even the entire olive material may be treated as a matter of preference among alternative natural substances containing fat and oil as well as aroma substances.

The claims further call for treating luster water produced in fruit and vegetable processing. Although Heidlas et al is silent regarding treatment of waste waters from processing, it would have been obvious to one having ordinary skill in the art at the time of the invention to have treated any material containing aroma containing natural substances including processed olives as a matter of preference employing the method set forth in Heidlas et al. It is not seen wherein the particular source of, for example, olive material (such as waste water) would have made for a patentable distinction.

The claims further call for the introduction of an entrainer such as alcohol with the compressed hydrocarbon. Although Heidlas et al is silent during the use of such an entrainer during the first extraction step, an alcohol retainer (e.g. ethanol) is employed with regard to the second extraction step which includes the use of compressed carbon dioxide. It would have been further obvious to have included said entrainer in the first extraction step for the same purpose.

8. Claims 22, 23, 31, 32, and 35 are rejected under 35 U.S.C. 103(a) as being

Art Unit: 1794

unpatentable over Dimick et al.

The claims further call for the particular temperature and pressure employed during the extraction. However, such determination would have been well within the purview of one of ordinary skill, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such pressure and temperature through routine experimental optimization.

It should be noted that the flavoring is removed either said column or an associated separator; Dimick et al is not clear regarding same. In either case, the process of separating the flavoring from the solvent is achieved separately from the extraction step. It is not seen where the difference in extracting/solvent separation in the same or different apparatus would provide for a patentable distinction. It would have been further obvious to have employed either the same or a different apparatus for each step as a matter of preference depending on, for example, cost considerations or equipment availability.

The claims further call for the starting material to be a luttar water produced in fruit and vegetable processing (and this is considered to be an alternative between that produced in fruit or vegetable processing). Dimick et al discloses preparing the flavoring extract from a juice, puree, or other liquid preparation from the fruit. It would have been further obvious to have extracted the flavoring from a luttar water source as a liquid preparation from processing fruit as a matter of preference.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dimick et al taken together with Heidlas et al.

Art Unit: 1794

Dimick et al further discloses vaporizing the hydrocarbon solvent (e.g. Example 1) but is silent regarding recycling same. However, it is well known to recycle solvents in similar extraction processes as taught, for example, by Heidlas (col. 3, lines 10-15). It would have been obvious to one having ordinary skill in the art at the time of the invention to have recycled said solvent for economic reasons as taught by Heidlas.

10. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dimick et al or Heidlas et al.

If it is shown that the processing of either one of Dimick et al or Heidlas et al is not conducted in a continuous manner as called for in the instant claims, it should be noted that it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed continuous processing of a batch or semi-batch process as a well known processing alternative. To make a process continuous does not add patentability to the claims . In re Lincoln et al, 1942 C.D. 386 and In re Korpi 602 O.G. 672.

### ***Response to Arguments***

11. Applicant's arguments filed 9/28/09 have been fully considered but they are not persuasive.

Applicant argues that contrary to the instant invention Heidlas et al requires the use of a two extraction system for extracting natural aromas and that the propane extraction removes fats/oils rather than aroma. However, the instant claims do not limit the process to a single step and/or excluding the second step of extraction as disclosed in Heidlas et al. In addition, Heidlas et al discloses that a "predominant portion of the

Art Unit: 1794

aroma substances” remain in the initial material after extracting the propane (e.g. col. 2, lines 31-35). This means also the propane extraction removes at least some aroma/flavoring substances. Although this may not be the intent of Heidlas et al (i.e. to remove flavoring/aroma along with fat/oil), Heidlas et al does provide processing steps that read on the instant claims that results in removal of flavoring/aroma from an initial material as required in the instant claims.

Applicant argues that Heidlas teaches away from the instant invention as fruits and vegetable juices and waters produced in processing of same containing practically no fats and oils which is an essential component to be removed in the Heidlas et al process. Heidlas et al, however, does not limit processing to the few substances expressly recited therein. Rather, Heidlas et al extends the treatment therein to “all other natural substances containing fat and oil as well as aroma substances are...also suitable” (col. 2, lines 39-41). Olives are a particular type of fruit as discussed above, and it would have been obvious to have treated same as a known alternative source of oil and aroma..

All other arguments have been addressed in view of the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.



Art Unit: 1794

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1794

/Anthony Weier/  
Primary Examiner, Art Unit 1794

Anthony Weier  
December 5, 2009